

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DONTIE S. MITCHELL,

Plaintiff,

No. 06-CV-6278 CJS

-vs-

NEW YORK STATE DEPARTMENT OF
CORRECTIONAL SERVICES, et al.,

DECISION AND ORDER

Defendants.

INTRODUCTION

Now before the Court are Plaintiff's Objections (Docket No. [#140]) to a Decision and Order [#138] of the Honorable Marian W. Payson, United States Magistrate Judge. Plaintiff's objections are denied.

BACKGROUND

The background facts of this action are detailed in prior rulings of this Court, and need not be repeated here. A motion for summary judgment is currently pending before the Court. At the same time, Plaintiff has filed motions to compel Discovery (Docket Nos. [#109] & [#124]). On September 5, 2012, Magistrate Judge Payson issued a Decision and Order [#138] denying the motions to compel without prejudice to renew them once the undersigned rules on the summary judgment motion. On September 13, 2012, the Court received Plaintiff's Objections [#140] to that Decision and Order. Plaintiff maintains that his motions to compel should be granted, since they were filed prior to the summary judgment motion, and since he needs discovery to identify potential new parties and claims. Plaintiff also states that he needs discovery "to adequately respond to the

Defendants' motions," although, to the extent that he is referring to the summary judgment motion, the time for responding to that motion has already passed, and he does not make the showing required by FRCP 56(d) (formerly FRCP 56(f)) in any event.

ANALYSIS

Pursuant to Rule 72(a) of the Federal Rules of Civil Procedure and Title 28 U.S.C. § 636(b)(1)(A), this Court may review non-dispositive matters previously decided by a magistrate judge and set them aside if they are clearly erroneous or contrary to law. *FED. R. Civ. P. 72(a); 28 U.S.C. § 636(b)(1)(A) (2002)*. A finding is clearly erroneous if, "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948).

Plaintiff's objections are to non-dispositive discovery-related rulings, and he has not met the difficult burden of showing that Magistrate Judge Payson's rulings were clearly erroneous or contrary to law.

CONCLUSION

Accordingly, Plaintiff's Objections [#140] are denied, and the Decision and Order [#138] is affirmed and adopted in all respects.

So Ordered.

Dated: Rochester, New York
October 19, 2012

ENTER:

/s/ Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge